

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MICHAEL D. MILAM,

Plaintiff,

v.

PIERCE COUNTY *et al.*,

Defendants.

Case No. C05-5842FDB

ORDER TO SHOW CAUSE WHY  
THE ACTION SHOULD NOT BE  
DISMISSED

This Civil Rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. § 636(b)(1)(B). Plaintiff has applied for and received *in forma pauperis* status. (Dkt. # 7).

In order to state a claim under 42 U.S.C. § 1983, a complaint must allege that (1) the conduct complained of was committed by a person acting under color of state law and that (2) the conduct deprived a person of a right, privilege, or immunity secured by the Constitution or laws of the United States. Parratt v. Taylor, 451 U.S. 527, 535 (1981), *overruled on other grounds*, Daniels v. Williams, 474 U.S. 327 (1986). Section 1983 is the appropriate avenue to remedy an alleged wrong only if both of these elements are present. Haygood v. Younger, 769 F.2d 1350, 1354 (9th Cir. 1985), *cert. denied*, 478 U.S. 1020 (1986).

This action appears to challenge the propriety of charges filed in superior court and plaintiff

1 asks for dismissal of that criminal case in this case. He also complains of retaliation by unnamed  
2 defendants. Generally, the federal courts will not intervene in a pending criminal proceeding absent  
3 extraordinary circumstances where the danger of irreparable harm is both great and immediate. See  
4 Younger v. Harris, 401 U.S. 37, 45- 46 (1971); see also Fort Belknap Indian Community v.  
5 Mazurek, 43 F.3d 428, 431 (9th Cir.1994), cert. denied, 116 S.Ct. 49 (1995) (abstention appropriate  
6 if ongoing state judicial proceedings implicate important state interests and offer adequate  
7 opportunity to litigate federal constitutional issues); World Famous Drinking Emporium v. City of  
8 Tempe, 820 F.2d 1079, 1082 (9th Cir.1987)(Younger abstention doctrine applies when the  
9 following three conditions exist: (1) ongoing state judicial proceeding; (2) implication of an  
10 important state interest in the proceeding; and (3) an adequate opportunity to raise federal questions  
11 in the proceedings).

12 Only in the most unusual circumstances is a petitioner entitled to have the federal court  
13 provide intervene by way of injunction or habeas corpus until after the jury comes in, judgment has  
14 been appealed from and the case concluded in the state courts. Drury v. Cox, 457 F.2d 764, 764-65  
15 (9th Cir.1972). See Carden v. Montana, 626 F.2d 82, 83-84 (9th Cir.), cert. denied, 449 U.S. 1014  
16 (1980). Extraordinary circumstances exist where irreparable injury is both great and immediate, for  
17 example where the state law is flagrantly and patently violative of express constitutional prohibitions  
18 or where there is a showing of bad faith, harassment, or other unusual circumstances that would call  
19 for equitable relief. Younger, 401 U.S. at 46, 53-54.

20 Plaintiff is ordered to show cause on or before **March 11<sup>th</sup>, 2006** why this action should not  
21 be dismissed

22 The clerk is directed to send a copy of this order to plaintiff and to note the **March 11<sup>th</sup>,**  
23 **2006** due date on the court's calendar.

24  
25 DATED this 8<sup>th</sup> day of February, 2006.

26  
27 /s/ J. Kelley Arnold  
28 J. Kelley Arnold  
United States Magistrate Judge